

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

MELVIN HUGO KAMP,

Defendant and Appellant.

E034322

(Super.Ct.No. SCR49951)

OPINION

APPEAL from the Superior Court of San Bernardino County. Roberta McPeters, Judge. Affirmed.

Steven A. Torres, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Gary W. Schons, Senior Assistant Attorney General, Michael T. Murphy and Scott C. Taylor, Deputy Attorneys General, for Plaintiff and Respondent.

Melvin Hugo Kamp, committed to Patton State Hospital pursuant to Penal Code section 1026, petitioned for admission to a conditional release program as the prerequisite

to restoration of sanity proceedings. (Pen. Code, § 1026.2.) Following a hearing, the trial court determined that Kamp was not ready for the program. Kamp appeals. We conclude that the trial court did not abuse its discretion in so ruling and we affirm it.

FACTS

1. *Evidence Presented at the Hearing*

At the hearing, Kamp submitted 40 pages of doctors' reports, dated April 21, 1999, through late 2002, treatment reports, recommendations, discharge criteria, and other matters.¹ He also submitted a collection of certificates he had earned. Both groups of documents were considered by the trial court as exhibits. Kamp did not request early transmission of these exhibits and they are not part of the record before us; therefore, we did not consider them for purposes of this appeal.

Kamp testified that he had been at Patton State Hospital for 14 years, during eight or nine of which he worked as a gardener. He was committed there after attempting to murder his neighbor with a .22-caliber rifle and having a nervous breakdown at county jail. With great reluctance, he acknowledged having a mental illness, but opined that he was able to control it with medication. He felt if he became stressed after his release, he could turn to an Alcoholics Anonymous sponsor or another person for help. He had a plan to prevent a relapse and felt he would not reoffend. In his opinion, his crime had been induced by his use of drugs. Some of Kamp's answers to his attorney's questions

¹ The prosecutor noted at the hearing, without contradiction by the trial court or defense counsel, that some of the reports had pages missing.

were bizarre and unintelligible. When the prosecutor attempted to cross-examine him, he refused to respond, saying, instead, “No comment,” even though the topics of most of the questions were matters about which his attorney had already questioned him. There were numerous letters in the trial court file authored by Kamp in which he accused numerous people at Patton of doing bad things to him.

A psychologist who had treated Kamp at Patton since 1998 testified for the People. He opined that Kamp was a paranoid schizophrenic, with delusions, based on the fact that Kamp believed people, mostly his fellow patients, were causing medical problems he was experiencing. When asked if Kamp indicated to him that the latter had any violent propensity towards these people, the doctor replied, “In one of th[e letters [Kamp] wrote to the Army or Navy^[2] complaining about them], he said that he realizes that the military has resources but that he [‘]could take out the garbage[’] and he was referring to problems that he was having with patients. He doesn’t make any real overt statements about I’m going to do this to somebody or they’re going to get it [¶] He’s a pretty emotionally controlled person and so when he does share this [with me], . . . his emotional expression doesn’t change a whole heck of a lot, but maybe his tone of voice is serious, that it’s bothering him that these things are happening and he would like to have it taken care of.” The doctor reported that while Kamp admitted that his crime was wrong and the result of poor judgment and mental illness, at other times, as recently

² The record before this court contains many letters Kamp also wrote to the trial court, complaining about these same people in the years leading up to this hearing.

as within six months of the hearing, he said that the victim, along with two other individuals, had been causing him problems and making his life difficult, which motivated him to commit the crime. The doctor termed Kamp's attitude towards these people as paranoid. The doctor concluded that Kamp was unable to understand how his mental illness related to the crime. Kamp saw the crime as a result of problems that "have been 99 percent medical . . . [and] one percent mental. . . . [He believes] . . . he had mental problems that were caused by drugs or relationship problems or caused by people doing things to him and not due to an illness that is . . . chronic" The doctor pointed out that before Kamp committed the crime, he had written to the President, the Environmental Protection Agency, the FBI, and the Navy, complaining about the people who were bothering him then, which included the victim. This behavior repeated itself during Kamp's treatment at Patton in that he wrote to agencies complaining about his fellow patients. Comparing the two sets of behaviors, the doctor concluded that Kamp continued to be "maladaptive in dealing with his illness." The doctor did not believe that Kamp thought that he was mentally ill. He noted that Kamp tended to avoid group therapy. He reported that Kamp did well with substance abuse therapy and other therapy unconnected with his mental illness and dangerousness. However, because Kamp denied having the mental illness he has, he was prevented from developing the coping skills he needed. Kamp had expressed the desire to discontinue taking his medications and had made statements consistently over the treatment period that he did not necessarily need them. The doctor opined that Kamp did not truly appreciate the need for treatment or medication. He felt that Kamp was not ready for outpatient release because the latter

continued to feel that his crime was justified, he was unresponsive to some professional help,³ he did not feel his mental illness was severe or chronic, he continued to act in response to his illness in a manner consistent with his behavior before the crimes, and he failed to follow the rules and when confronted about this, said that “everybody does it,” rather than admit that he had erred. The doctor felt that Kamp remained mentally ill and a danger to himself and the safety of others and that he could not be safely treated in an outpatient setting.

2. The Trial Court’s Conclusions

The trial court found that Kamp had done very well with his substance abuse problems and group activities. The court noted that Kamp had grudgingly admitted his need for medications and expressed some remorse for his crime. However, the court found, Kamp “still lack[ed] the complete insight necessary to allow him to fully move forward with his treatment. He appear[ed] at least resistant to those things he does not want to hear, [as evidenced by] . . . his unwillingness” “at this [hearing]” “to answer questions that . . . covered some of the same topics that were covered by [his attorney] when they were asked by [the prosecutor]. [¶] . . . I agree with [the psychologist]’s assessment and the reports that I have read that . . . Kamp need[ed] to be retained in the setting he is currently in, which is structured, and receive treatment there and that he is not yet ready for [the conditional release program] or a more independent setting.”

³ He refused to attend the last conference with his treatment team.

DISCUSSION

The issue at the instant hearing was whether Kamp would be a danger to the health and safety of others due to his mental illness if under supervision and treatment in the community. (Pen. Code, § 1026.2, subd. (e).) He bore the burden of proof by a preponderance that he would not be. (Pen. Code, § 1026.2, subd. (k); *People v. Michael W.* (1995) 32 Cal.App.4th 1111, 1117; *People v. Sword* (1994) 29 Cal.App.4th 614, 621 [opinion of this court].) The abuse of discretion standard applies. (*People v. Sword, supra*, 29 Cal.App.4th at pp. 624-625.) Application of that standard requires us to determine whether the trial court relied on proper factors and whether those factors find some support in the record. (*People v. Henderson* (1986) 187 Cal.App.3d 1263, 1269.)

Kamp begins his attack on the trial court's ruling by pointing out that there was no evidence that he "even gets angry at the perceived action of the . . . people" who were causing him problems. The record does not support his assertion. It contains letters in which Kamp complains to the trial court about these people. It is evident that Kamp is both angry at these people and frustrated with the inability of everyone to whom he has complained to do anything about them. Kamp also asserts that there was "no suggestion that [he] acts out as a result of [the] inaction" of the institutions to whom he complained about these people. However, it cannot be ignored that Kamp has been confined in a high security state hospital, where his opportunities to "act out" are limited to about what he actually does, which is writing to numerous individuals or institutions to complain about the people he perceives are doing him wrong. As the doctor explained, it is not in Kamp's nature to threaten. He is an emotionally controlled person, and the staff at Patton

often referred to him as being passive-aggressive. Kamp asserts that there was no evidence that he posed a danger to others. We disagree. As the doctor pointed out, Kamp continues to react to his own paranoid thoughts without insight into their source and in a manner that is consistent with his behavior before he committed the crime. Given his refusal to accept the existence of his illness and his unwillingness or inability to deal positively with it outside the confines of Patton, the trial court did not act unreasonably in concluding, by inference, that Kamp posed a danger to others.

DISPOSITION

The ruling is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RAMIREZ

P. J.

We concur:

McKINSTER

J.

RICHLI

J.